

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

v.

CASE NO.: 22-4689

DIANA TOEBBE,

Appellant.

**APPELLANT’S UNOPPOSED MOTION TO EXTEND TIME
TO RESPOND TO GOVERNMENT’S MOTION TO DISMISS**

Pursuant to Federal Rule of Appellate Procedure 26(b), Appellant Diana Toebe, by counsel, moves the Court to grant her until on or before February 20, 2021 (an additional 20 days from the current deadline) to file her response to the Government’s Motion to Dismiss Appeal. (Doc # 12-1). In support of her motion, Mrs. Toebe states the following:

1. On November 29, 2022, Mrs. Toebe filed a timely notice of appeal.
2. On January 17, 2023, the Court entered a briefing order. (Doc # 11).
3. On January 18, 2023, the Government filed a motion to dismiss the appeal and a motion to suspend the briefing order. (Doc # 12-1; 13). In the motion, the Government argues that Mrs. Toebe’s appeal is barred by the

appellate waiver in her plea agreement. The Government's motion to dismiss, including exhibits, is 245 pages in length.

4. On January 19, 2023, the Court ordered Mrs. Toebe to file a response to the Government's motion to dismiss on or before January 30, 2023.

5. In her response to the Government's motion to dismiss, Mrs. Toebe intends to, among other arguments, assert that her sentencing hearing was infected with serious, fundamental due process errors that transcend the appellate waiver in her plea agreement. Similarly, Mrs. Toebe intends to argue that the Court should not enforce the appellate waiver because "to do so would result in a miscarriage of justice." *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005)(citing *United States v. Andis*, 333 F.3d 886, 891 (8th Cir. 2003)). To address these issues, Mrs. Toebe's response to the Government's motion to dismiss will require extensive discussion and analysis of the proceedings below, including her nearly seven-hour sentencing hearing.

6. With the exception of certain types of filings not applicable to this motion, Federal Rule of Appellate Procedure 26(b) provides that "[f]or good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires."

7. For the reasons stated above, Mrs. Toebe requests that the Court extend the deadline for her to respond to the Government's motion to dismiss

to on or before February 20, 2023. This 20-day extension is necessary for her to adequately prepare her response.

8. The Government does not oppose the extension of time for filing Mrs. Toebe's response.

Wherefore, the Appellant respectfully requests that the Court extend the deadline for her to file her response to the Government's motion to dismiss to February 20, 2023.

APPELLANT
By Counsel

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CERTIFICATE OF SERVICE

I, Barry P. Beck, counsel for the Appellant, Diana Toebbe, certifies that on January 20, 2023, the **APPELLANT’S UNOPPOSED MOTION TO EXTEND TIME TO RESPOND TO GOVERNMENT’S MOTION TO DISMISS** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Barry P. Beck

Barry P. Beck